IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 894 of 1983
For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT
Versus
MAHENDRASING MITHAILAL CHAUHAN

Appearance:
1. Criminal Appeal No. 894 of 1983
Mr. K.P.Rawal, APP for the appellant
Mr.D.C. Dave for MS AMI YAGNIK for Respondent No.1
MR JM PANCHAL for Respondent No. 2
MR PANKAJ K SONI for Respondent No. 5

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE M.C.PATEL

Date of decision: 09/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. By means of filing this appeal under Section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has questioned correctness and legality of the judgment and order dated April 18, 1983, passed by the learned Additional Sessions Judge, 8th Court, Ahmedabad, in Sessions Case No.169 of 1982, by which judgment and order, respondents Nos. 1, 2 and 5 along with other respondents came to be acquitted from the charges framed

under Sections 395, 451, 452, 506(2) and 34 of the Indian Penal Code and under Section 135(1) of the Bombay Police Act.

2. It is the case of the prosecution that the complainant, Babulal Keshavlal Shah was running a factory in G.I.D.C. Sheds at Odhav. There were two divisions in the factory, one of rolling and other of manufacturing utensils of stainless steel. Since about a year prior to filing of the complaint, the rolling division was closed and they were manufacturing utensils from the ready iron slabs. As the rolling division was closed, the shed was let out to one Jayantibhai Joshi of Bombay on a monthly rent of Rs.15000/- and, accordingly, an agreement was executed on a stamp paper of Rs.100. The complainant had taken Rs.30,000/- as deposit from the said Jayantibhai. The said Jayantibhai could not pay the necessary rent fell due. The complainant asked his friend P.W.12 Nareshkumar to lock the portion let out to Jayantibhai. Accordingly, the same was locked by said P.W.12. After Nareshkumar locked the premises of Jayantibhai, his brother-in-law Navinbhai and Naresh approached the complainant and they asked the complainant to allow him to take away his steel slabs lying in the factory. The complainant asked for the rent due and asked them to come to the factory on the next day. On the next day, P.W.12, said Navinbhai and one Vasantbhai of Bombay who claim to be owner of the slabs lying in the factory went to the factory and weighed the same. The said slabs weighed 1585 kgs. The said Jayantibhai asked the complainant to keep the steel slabs safely till the dues were satisfied. The said Jayantibhai handed over the possession of the premises and also agreed to pay up the due rent and, accordingly, executed two writings on January 31, 1982. Jayantibhai thereafter left Ahmedabad. Vasantbhai who was residing in Ahmedabad used to see the complainant and informed him that he was waiting for Jayantibhai and if Jayantibhai could return his goods he proposed to go away to Bombay with the same.

3. In the last week of filing of the complaint, that is February 25, 1982, the said Navinbhai went to the house of the complainant and informed him that Vasantbhai has engaged one Jayantibhai Kapasi and he gave him a threat to get the goods of Vasantbhai back and also gave a threat of murder. The complainant, therefore, informed him to take away the goods after settling the accounts. On February 20, 1982, Navinbhai went to the house of the complainant and informed him that one Mahendra Chauhan informed him that you get the money from Jayantibhai of

the blower for which had stood a guarantee and there is no reason to be afraid of Jayantibhai Kapasi. He also advised to see his persons. Complainant informed Navinbhai that he can do whatever he deems proper. Thereafter, on February 21, 1982 at about 1.00 a.m. after mid-night Navinbhai knocked the door of the complainant and shouted. The complainant and his wife therefore woke up. Complainant's daughter aged 11 years and his son aged 8 years were sleeping in the house. The complainant opened the door and saw Navinbhai in company of Mahendra Chauhan whom the complainant knew as the complainant had constructed the furnace through him along with some 5 to 6 unknown persons. On door being opened those persons came in the house and sat in the drawing room. Navinbhai told the complainant that these persons are demanding the goods lying in the factory and you give him the goods. Complainant informed him that the goods which were lying in the factory were entrusted to him by Jayantibhai and unless Jayantibhai tells him he cannot part with the same. At that time one person whose name was disclosed as Radheshyam told the complainant to hand over the goods to Navinbhai. Mahendra told the complainant by pointing out a person that he is Radheshyam. Do you know him or not ? Complainant therefore told them to see Naresh saying that he will do whatever Naresh tells him. They got up and went away saying that they are just coming after calling Naresh. Thereafter, they again came in company of Naresh and at that time the complainant told them to come on the next day. On February 22, 1982 at about 3.00 to 3.30 Naresh came to the house of the complainant and Mahendra Chauhan, Navinbhai and others came there. At that time, the wife of the complainant was at home. The person named Radheshyam told the complainant to settle the accounts and said that we do not want the goods lying in the factory, but pay Rs.50,000/-. The complainant said that it is the goods of Jayantibhai and he cannot return it, nor he can pay for the same. Radheshyam gave a slap to Navinbhai saying that why did he not tell him that presence of Jayantibhai will be required. The complainant got frightened at this time. Radheshyam at that time told one man called Lalsing who was having beard that "Lalsing these persons will not agree like this. They should be finished." Complainant asked that what do you want and Lalsing said that pay Rs.50,000/otherwise your life will be terminated. In the last it was agreed to pay Rs.30,000/-. At that time, Radheshyam got up to assault the complainant and the complainant got frightened. Radheshyam took out a dagger from under below his pant. Complainant was frightened and told them to come in the noon of day after tomorrow.

Radheshyam also said that if you will not pay the money and if you will complaint to the police you will loose your life. The complainant's wife was present in the room who was also frightened. They all left telling that they will come on the third day. Thereafter, the complainant made necessary arrangements for the money and were kept ready in the house and they decided to pay money to save their lives. On February 24, 1982 at about 3.30 to 4.00 p.m. Radheshyam, Lalsing and others came in company of Mahendra Chauhan and demanded Rs.30,000/-. The complainant's wife told them that they should take money from Jayantibhai and they are not concerned. Why are you extorting money by threat from us. Radheshyam stood up and took out the dagger and the complainant said that "I am paying up the money and do not raise shouts". Complainant told his wife and friend Hemant to go and get money from the inner cupboard and accordingly they paid Rs.10,000/and time to pay the remaining amount was granted till the next day. When those persons were counting the money the complainant's wife had gone outside the house and recorded the number of the car which was G.J.F.1186. They then decided in the evening to file the complaint and, accordingly, the complainant, his wife and Hemant P.W.9 went to the office of the Commissioner of Police on February 25, 1982. The Commissioner of Police on hearing the complaint called for the Superintendent of Police of the Crime Branch and the complaint was lodged.

4. On the complaint being lodged the investigation was entrusted to one Mr. Mistri Arjunsing Girdharilal, P.W.14, who in the company of some of the police officers went to the house of the complainant and arranged the trap. On February 25, 1982 Mahendra alone came to demand money and he was caught by P.W.14 and two other police officers who were present in the house. After Mahendra being arrested P.W.14 asked the wife of the complainant and her brother-in-law Dinesh P.W.8 to go and hire a taxi to go in search of other accused persons near Nagarvel Hanuman as their presence was suggested there by accused No.1 Mahendra. The custody of the accused No.1 was entrusted to Superintendent of Police who was sitting in his car near the bungalow and P.W.14 and his staff personnel went to Bhadra. Before that the wife of the complainant Virbala P.W.2, and P.W.8 Dinesh had proceeded for going to Bhadra. On the way P.W.2 saw Radheshyam and others near Reserve Bank in a rickshaw and P.W.2 and P.W.8 chased that rickshaw which they were able to intercept near Machhi Gali and P.W.2 and P.W.8 caught hold of the two persons sitting in the rickshaw with the help of the people and at that time the third person who

was sitting in the rickshaw had escaped. P.W.2 and P.W.8 had brought these two persons who are accused nos. 2 and 6 to the Karanj Police Station. P.W.14 came from the other side and those persons were arrested and on search of the person of accused No.2 the dagger was found. Thereafter, P.W.14 and P.W.2 and P.W.8 dropped the idea of hiring a taxi and going to Nagarvel Hanuman. P.W.14 took these accused Nos. 2 and 6 to the Crime Branch situated at the Gaekwad Haveli Police Station and in the meantime the Superintendent of Police to whom the accused no.1 was entrusted had already reached Crime Branch of Gaekwad Haveli Police Station. On interrogation of accused Nos. 2 to 6, accused No.2 showed willingness to show the currency notes of Rs.10,000/ taken from the complainant on the earlier day. Accordingly, the panchnama of discovery of Rs.10,000/was made. Thereafter, the Investigating Officer seized the motor cycle No. G.R.L. 414 and the car No. G.J.F.1186 and also another motor cycle No. G.R.F. 6459. The Investigating Officer P.W.14 recorded the statements of the witnesses named hereafter amongst others. The identification parade was held and the necessary panchnama for the same was drawn. On completion of the investigation the P.W.14 submitted the chargesheet in the Court of the Metropolitan Magistrate who committed the case to Sessions Court for trial.

5. Charge Exh.6 was read over to the accused persons who pleaded not guilty and claimed to stand the trial.

6. To prove the charge against the respondents, the prosecution had examined as many as 15 witnesses and had produced voluminous documentary evidence.

7. The learned Additional Sessions Judge, 8th Court, Ahmedabad, on appreciation of oral as well as documentary evidence, acquitted the respondents on the following grounds:

(i) The case as put up before the Court by the complainant was inherently improbable;

(ii) True and real facts were suppressed by the interested witnesses who were examined before the Court and there was inordinate delay in lodging the First Information Report;

(iii) There was tacit silence for which there was no explanation offered by the prosecution;

(iv) The conduct and behaviour of the witnesses before the incident, at the time of the incident and after the incident was most unnatural;

(v) There was improvement in material facts;

(vi) There were material contradictions in the evidence of PW 1 and PW 2 who were main witnesses;

(vii) Arrest of accused Nos. 2 and 6 was in a very dramatic manner;

(viii) Recovery of amount of Rs.10,000/- from accused No.2, was not proved by the prosecution.

(ix) The test identification parade was held and the witnesses had enough opportunity to see the accused persons and, therefore, evidence of test identification parade was of no consequences and importance.

On the aforesstated grounds and after appreciation of the evidence led by the prosecution, the learned Additional Sessions Judge, 8th Court, Ahmedabad City, acquitted the respondents by the impugned judgment, giving rise to the present appeal.

8. During pendency of the appeal, respondent No.3, Raghunath Devisharan Goswami, had expired on February 8, 2001. Similarly, respondent No.6, Santoshkumar Shivmurat Mishra, had expired on October 26, 2001. The death of the above respondents was supported by the report of the Police Sub-Inspector, DCB Police Station, Ahmedabad City. Along with the said report, xerox copies of the death certificates of respondent No.3 and respondent No.6 have been produced. In view of the death of respondent No.3 and respondent No.6 during pendency of the appeal, the appeal filed against them finally abates as per Section 394 of the Code of Criminal Procedure. It may be stated that the respondent No.4, Surajbhai Ramavatar Patel, died before framing of the charge.

9. Mr. K.P. Rawal, learned Additional Public Prosecutor, learned advocate Mr. D.C. Dave appearing for learned advocate Ms. Amy Yagnik, learned advocate Mr. J.M. Panchal, and learned advocate Mr. Pankaj K. Soni, have taken us through the entire evidence of the prosecution. We have perused the oral as well as documentary evidence produced at the trial.We have reappreciated the entire evidence and have heard at length the submission of the learned APP and the learned counsel for the respondents.

10. Having carefully examined the rival submissions and having reappreciated the entire evidence, we are of the view that the grounds on which the acquittal of the respondents is based, are sound and based on proper appreciation of evidence and do not call for any

interference in this appeal filed against the acquittal. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Additional Sessions Judge who had an advantage of observing demeanour of witness. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Additional Sessions Judge for acquitting the respondents. Suffice it to say that the learned Additional Sessions Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Additional Sessions Judge in order to convince us to take the view contrary to the one already taken by the learned Additional Sessions Judge. Therefore, the acquittal appeal deserves to be rejected.

11. For the foregoing reasons, we do not find any substance in the appeal. The appeal, therefore, fails and is dismissed. Bail bonds, if any, stand cancelled.

(M.H.Kadri, J.)

(M.C. Patel,J.)

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